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**Family Fare, Inc. d/b/a Glen's Market and Local 876,  
United Food and Commercial Workers Interna-  
tional Union, AFL-CIO. Case 7-CA-48457**

June 10, 2005

**DECISION AND ORDER**

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN  
AND SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on March 29, 2005, the General Counsel issued the complaint on April 5, 2005, alleging that the Respondent has violated Section 8(a)(1) and (5) of the Act by refusing the Union's request to bargain and to provide information following the Union's certification in Case 7-RC-22118. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On May 5, 2005, the General Counsel filed a Motion for Partial Summary Judgment. On May 9, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

**Ruling on Motion for Partial Summary Judgment**

The Respondent admits its refusal to bargain and to furnish information, but contends that the Union's certification is invalid because the Board erred in overruling its objections to the election in the representation proceeding. The Respondent also denies that the information requested by the Union is relevant and necessary to the Union's role as bargaining representative.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the General Counsel's Motion for Partial

Summary Judgment and will order the Respondent to bargain with the Union.

The General Counsel does not seek summary judgment on the complaint allegations concerning the Union's request for information, but instead the General Counsel states that, as to those allegations, "the Respondent appears to raise issues of fact aside from its challenge to the validity of the Charging Union's certification." Thus, we find that a hearing is warranted on paragraphs 12, 13, and 14 of the complaint.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation with its main office at 829 W. Main Street, Gaylord, Michigan, has operated retail grocery stores in the State of Michigan, including a store located at 5463 North Huron Road, Oscoda, Michigan.

During the calendar year 2004, a representative period, the Respondent had gross revenue in excess of \$500,000 and purchased goods valued in excess of \$50,000, which were shipped to its Oscoda, Michigan facility directly from points located outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Local 876, United Food and Commercial Workers International Union, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the election held on January 18, 2002, the Union was certified on February 22, 2005,<sup>1</sup> as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time clerks, cashiers, meat cutters, department specialists, and courtesy clerks employed by the Respondent at its facility located at 5463 North Huron Road, Oscoda, Michigan; but excluding store director, assistant store directors, customer services manager, meat manager, deli manager, bakery manager, produce manager, managers in training, seasonal employees, and guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

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<sup>1</sup> 344 NLRB No. 25 (2005).

### B. Refusal to Bargain

On about March 1 and 18, 2005, the Union, in writing, requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since about March 24, 2005, the Respondent, by letter from its agent Mark Eriks, has failed and refused to recognize and bargain with the Union. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(1) and (5) of the Act.

### CONCLUSION OF LAW

By failing and refusing since March 24, 2005, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

### REMEDY

Having found that the Respondent has violated Section 8(a)(1) and (5) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

### ORDER

The National Labor Relations Board orders that the Respondent, Family Fare, Inc. d/b/a Glen's Market, Oscoda, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 876, United Food and Commercial Workers International Union, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if

an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time clerks, cashiers, meat cutters, department specialists, and courtesy clerks employed by the Respondent at its facility located at 5463 North Huron Road, Oscoda, Michigan; but excluding store director, assistant store directors, customer services manager, meat manager, deli manager, bakery manager, produce manager, managers in training, seasonal employees, and guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Oscoda, Michigan, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 24, 2005.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 10, 2005

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Robert J. Battista, Chairman

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Wilma B. Liebman, Member

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Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with Local 876, United Food and Commercial Workers International Union,

AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time clerks, cashiers, meat cutters, department specialists, and courtesy clerks employed by us at our facility located at 5463 North Huron Road, Oscoda, Michigan; but excluding store director, assistant store directors, customer services manager, meat manager, deli manager, bakery manager, produce manager, managers in training, seasonal employees, and guards and supervisors as defined in the Act.

FAMILY FARE, INC., D/B/A GLEN'S MARKET